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Charles Darwin University

Final Examination

Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 1, 2018					

LWZ304 – Administrative Law	DURATION	
	Reading Time:	10 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<ol style="list-style-type: none"> Students must answer ANY THREE (3) QUESTIONS out of the four available problem questions. All questions are worth equal marks. This examination is worth 60% of the total mark. Writing is permitted on the exam question paper during reading time. Recommended time for each question is 40-45 minutes. <p>Enter the number of each question attempted in the appropriate column on the front page of the exam answer booklet.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	3 x 16 Page Book	

THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.

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LEFT BLANK.

ANSWER ANY THREE (3) OF THE FOLLOWING FOUR QUESTIONS.

QUESTION ONE

The *Industry Research and Development Act 1986* (Cth) provides as follows:

1. The object of this Act is to promote the development of Australian industry by encouraging research and development activities that involve innovation or experimentation.
2. The Industry Research and Development Board (the Board) may make an industry development grant to any Australian company which qualifies under this Act.
3. A company which is denied a grant under this Act may appeal against the decision of the Board to the Federal Circuit Court on the basis that there is an error of law in the Board's decision.
4. The Board may make regulations which are necessary or convenient for carrying this Act into effect.

The Board has made the Industry Development Grant Regulations, as follows:

1. A grant shall not be made to a company that conducts experiments on human beings, animals or any living creature.
2. A grant shall not be made to a company that is currently in receipt of an industry development grant from another source.
3. Every grant made under this Act shall be subject to the condition that 10% of the amount of the grant shall be spent on activities that promote the wellbeing of the employees of the company receiving the grant.

The Phai See Research Company (the Company) is wholly owned by the University of Alice Springs. It conducts experiments into the medicinal properties of tea tree oil, particularly in curing acne, dandruff and other skin complaints. The Company applied for but was refused a grant for 2017.

The Company seeks your advice about whether the Regulations are valid.

20 MARKS

QUESTION TWO

The *Thredbo Parks Authority Act 2002* (Cth) sets up the Thredbo Parks Authority (TPA). The objects of the TPA are to improve the facilities and services available in the snow fields; to increase the number of tourists in the area; and to distribute the profits earned by the TPA.

The Act provides:

- s 2: A residential ski lodge (lodge) must obtain a licence each year from the TPA.
- s 3: A lodge which has a licence is eligible to receive profits distributed by the TPA.
- s 5: Annual profits of the TPA shall be distributed in accordance with a formula devised by the TPA.

s 6: The formula shall be tabled in both Houses of the Parliament and may be disallowed by a vote in either House.

The TPA has announced that it is considering devising a new formula based on three factors: bed occupancy rate in the previous season; a loading for lodges with family membership; and the age of the lodge. The TPA gathered information for the application of the formula from annual returns submitted by each lodge. The manager of the SnowGum Lodge Pty Ltd (the Lodge) has received an opinion from an economist that the effect of the formula will be to take profits away from the larger lodges and reallocate them to smaller lodges. This will reduce the number of beds available in the Thredbo ski fields. As a consequence the Lodge will have to reduce staff, cut its occupancy rate and will produce lower profits.

The Lodge asked the TPA to consider a submission to the TPA before the formula is finalised. The application was refused. Two days after the letter of refusal from the TPA, the Lodge receives a letter, dated 20 June 2017, from the Minister for Tourism, saying that she has intervened. The Minister confirmed the formula and declines any further discussion. The Lodge advises the Minister that it intends to challenge the decision in the Federal Court. The Minister thereupon writes to the Lodge advising that she is prepared to reconsider the formula if a submission is received by 5.00pm on the following day.

The Lodge complied with the deadline but complained in the submission that the time was insufficient to gather all the information they wished to present. The Minister affirmed her earlier decision.

Advise the Lodge: Can it challenge the decision of the TPA not to accept its submission and the action taken by the Minister to intervene in the dispute? Assess its prospects of success.

20 MARKS

QUESTION THREE

The *Gene Technology Act 2000* (Cth) ('the Act') provides as follows:

1. The object of this Act is to protect the health and safety of people and the environment from risks posed by gene technology.
2. It shall be an offence for a person to create or undertake experiments relating to genetically modified organisms, unless the person has been issued with a licence by the Gene Technology Regulator (the Regulator).
3. The Regulator is to be appointed for a one year term of office and is not subject to Ministerial direction. The Minister may only dismiss the Regulator during the term of office for incapacity, serious misconduct or if the Regulator has committed an act of bankruptcy.

4. The Regulator, before considering an application for a licence under s 2 of this Act, shall take such steps as are appropriate in the circumstances to bring the application to the attention of the public or any section of the public that may relevantly be affected by the experiment proposed to be undertaken.
5. A person who is aggrieved by a decision of the Regulator may appeal against that decision to the Administrative Appeals Tribunal.

The Regulator recently received and dealt with an application for a licence under the Act from Madscience Ltd, to undertake experiments involving genetically modified bacteria at its premises in Darwin, NT. The experiments are to involve the bacterium *Yersinia pestis*, which is generally spread by flea bites or contact with an infected animal. The bacterium is believed to have been the cause of the Black Death Plague in Europe in the 14th century. Madscience Ltd provides the Regulator with a report from a University of Alice Springs post-doctoral researcher, which details research showing that the bacterium has naturally mutated since the 14th century and is no longer able to infect humans or any other mammals. Madscience researchers state that preliminary results show that genetically engineered modifications to the *Yersinia pestis* bacterium could make it effectively almost heatproof, allowing it to be added to fracked shale gas from the Beetaloo Basin in the NT where it would then bind to carbon dioxide atoms upon ignition in a gas-powered generator rendering the resulting molecules solid even at very high temperatures. The molecules would be precipitated to the floor of the generator furnace, thereby automatically and at low cost removing all carbon from the atmospheric emissions from gas-fuelled power stations.

The only steps taken by the Regulator to advertise the application were to publish details of it in the *Darwin Weekly Chronicle* which is delivered to Darwin households. The Regulator received no submissions and went ahead and granted the application.

You have been consulted by the Australian Association of Scientists Incorporated and by Elicia Turgoye, about the validity of the licence granted to Madscience Ltd by the Regulator. The Association is opposed to Madscience Ltd's research, because it believes that the research is inherently dangerous and that the safety assurances given by Madscience Ltd are dubious. The Association has been told by the International Scientists Forum that Australian scientists will be isolated within the international science community if this research goes ahead, and that they will not be invited either to participate in international conferences run by the Forum or be involved in joint international research projects sponsored by the Forum.

Elicia Turgoye owns a house adjoining Madscience Ltd's research premises. She is particularly concerned for her own health and safety if the research goes ahead and bacteria escape.

Neither Elicia nor the Association received the *Darwin Weekly Chronicle* (Elicia has a 'no junk mail' sticker and the Association's head office is in Sydney).

Subsequently the Four Corners show on ABC TV runs a program which reveals that the Minister responsible for the Act had written to Madscience Ltd one month prior to its licence application, on Ministerial letterhead, congratulating its board and management on their Darwin initiatives which, the letter stated, would make an extraordinary contribution to reducing world greenhouse gas emissions and to the development of northern Australia, not to mention

enormously enhancing the government's re-election prospects. The letter is copied by the Minister to the Regulator under cover of an email saying "I note that your appointment as Regulator expires next month. Do you wish to apply for its renewal?"

The Association and Elicia both seek your advice as to whether the Regulator's decision is valid. Outline and analyse all reasonably possible grounds for judicial review of the licence grant. What preliminary steps would you advise them to take prior to commencing judicial review proceedings.

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QUESTION FOUR

The *Export Grants Act 1980* (Cth) provides as follows:

1. The Minister may make a financial grant, subject to any condition as the Minister sees fit, to any corporation which manufactures goods in Australia, for the purpose of enabling that corporation to export the manufactured goods to another country.
2. Where the Minister has earlier decided to make a grant to a corporation and there are still payments left to be made under the grant, the Minister may revoke the remainder of the grant, if the Minister is of the opinion that the corporation is in breach of any conditions which the Minister has imposed on the grant.
3. A corporation may appeal to the Export Grants Tribunal against a decision of the Minister under s 1 refusing to make a grant, or a decision of the Minister under s 2 revoking a grant.
4. The *Tribunal* shall conduct a hearing into any appeal made to it under s 3, and may make a decision *confirming* the decision of the Minister, *reversing* the decision of the Minister and *substituting a new decision*, or *referring the decision back* to the Minister for reconsideration. [emphasis added]

A Company (A Co) applies to the Minister for an export grant and is refused one. It wishes to institute a common law challenge to the Minister's decision, since it believes that the Minister's decision is made in breach of one of the grounds for judicial review of administrative action. Assume that the decision of the Minister or tribunal was unlawful for breaching one or more of the grounds for judicial review of administrative action. You need not consider which particular breach/es were found to have occurred.

Which prerogative writ or equitable remedy would be most suitable? NB Do not consider AD(JR) Act review.

Would it be more tactically advantageous for A Co to bring a common law challenge or to appeal to the Export Grants Tribunal first?

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END EXAM